

House Bill 1104 (AS PASSED HOUSE AND SENATE)

By: Representatives Pruett of the 144th, Ramsey of the 72nd, Cole of the 125th, Glanton of the 76th, and Abrams of the 84th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 15, Title 16, and Code Section 17-10-11 of the Official Code of Georgia Annotated, relating to juvenile proceedings, crimes and offenses, and credit for time served in confinement, respectively, so as to change and create provisions relating to juvenile offenders; to provide for graduated sanctions and secure detention for children who violate the terms of their probation; to define terms; to provide for an administrative procedure for hearing alleged violations of probation; to correct cross-references and add smash and grab burglary to the list of acts constituting a designated felony; to change provisions relating to dispositions for delinquent children; to clarify provisions relating to juveniles receiving credit for time served; to extend a sunset date for secure confinement; to provide for the new offense of smash and grab burglary; to provide for the elements of the offense; to provide for penalties; to provide for smash and grab burglaries in the context of contributing to the delinquency of a minor; to provide for smash and grab burglaries as racketeering activity; to remove the exception for juvenile court credit for time served in Title 17; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, is amended by revising Code Section 15-11-30.3, relating to commission of designated felony act of burglary by a child 15 years of age or older, by adding a new subsection to read as follows:

"(e) The provisions of this Code section shall not apply to a smash and grab burglary."

SECTION 2.

Said chapter is further amended by adding a new Code section to read as follows:

"15-11-40.1.

(a) For purposes of this Code section, the term:

(1) 'Department' means the Department of Juvenile Justice.

(2) 'Graduated sanctions' means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements;

(C) Community service;

(D) Referral to treatment and counseling programs in the community;

(E) Weekend programming;

(F) Electronic monitoring, as such term is defined in Code Section 42-8-151;

(G) Curfew;

(H) An intensive supervision program; or

(I) A home confinement program.

(3) 'Hearing officer' means a department employee or county juvenile probation office employee, as applicable, who has been selected and appointed by the department or county juvenile probation office, as applicable, to hear cases alleging violations of probation for administrative sanctioning. A hearing officer shall not be a probation officer who has direct supervision over the child who is the subject of the hearing.

(4) 'Probation management program' means a special condition of probation that includes graduated sanctions.

(5) 'Secure probation sanctions program' means secure confinement of seven, 14, or 30 days.

(b) In addition to any other terms or conditions of probation provided for under this chapter, the court may require that children who receive a disposition of probation:

(1) Be ordered to a probation management program; or

(2) Be ordered to a secure probation sanctions program by a probation officer or hearing officer.

(c) Where a child has been ordered to a probation management program or secure probation sanctions program, the court shall retain jurisdiction throughout the period of the probated sentence and may modify or revoke any part of a probated sentence as provided in Code Section 15-11-40.

(d)(1) The department in jurisdictions where the department is authorized to provide probation supervision, or the county juvenile probation office in jurisdictions where probation supervision is provided directly by the county, as applicable, shall be authorized to establish rules and regulations for graduated sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of a probation management program.

(2) The department or county juvenile probation office, as applicable, shall not sanction probationers for violations of conditions of probation if the court has expressed an intention in a written order that such violations be heard by the court.

(e) The department or county juvenile probation office, as applicable, shall impose only those restrictions equal to or less restrictive than the maximum sanction established by the court.

(f) The secure probation sanctions program shall be established by the department. Exclusion of a child from a secure probation sanctions program otherwise authorized by this Code section to enter such program shall be mutually agreed upon by the Council of Juvenile Court Judges and the department. The secure probation sanctions program shall be available to the juvenile courts to the extent that each secure facility has capacity for such offenders within its facilities. Prior to reaching full capacity, the department shall inform the various juvenile courts of its capacity constraints.

(g)(1) When requesting the secure probation sanctions program, probation officers supervising a child under a probation management program shall provide an affidavit to the court specifying:

(A) The elements of the child's probation program;

(B) The child's failures to respond to graduated sanctions in the community; and

(C) The child's number of violations and the nature of each violation.

(2) If a probation officer fails to document the violations and specify how the child has failed to complete a probation management program, such child shall be ineligible to enter the secure probation sanctions program.

(3) A child may enter the secure probation sanctions program if ordered by the court and:

(A) The probation officer has complied with the provisions of paragraph (1) of this subsection and the criteria set by the department for entrance into such program and the child has had three or more violations of probation; or

(B) A child in a probation management program and his or her parent or guardian, or a child in such program and his or her attorney, admit to three or more violations of such program and sign a waiver accepting the sanction proposed by the probation officer.

(4) Each new violation of a condition of a probated sentence may result in a child being sentenced to the secure probation sanctions program; provided, however, that if a child is sentenced to the secure probation sanctions program and completes all program components in the seven, 14, and 30 day programs, such child shall be ineligible to attend the secure probation sanctions program for a future violation of a condition of the same probated sentence.

(h)(1) When a violation of a condition of probation occurs, a child may have an administrative hearing conducted by a hearing officer. If the hearing officer determines by a preponderance of the evidence that such child violated the conditions of probation, the probation officer shall be authorized to impose graduated sanctions or a secure probation sanctions program. A child's failure to comply with a sanction imposed under this paragraph shall constitute another violation of probation.

(2) The hearing officer's decision shall be final unless such child files, within five days of the service of such decision, a written demand with the hearing officer for review of such decision. Such demand shall not stay the sanction decision. The hearing officer shall issue a response to such demand within five days of receiving such demand.

(3) If the hearing officer insists on the sanction, such decision shall be final unless the child files an appeal in the court that originally adjudicated the child. Such appeal shall be filed within ten days of the date of the decision of the hearing officer.

(4) The appeal shall first be reviewed by the court upon the record. At the court's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay the sanction decision.

(5) Where the court does not act on the appeal within 15 days of the date of the filing of the appeal, the sanction decision shall be affirmed by operation of law."

SECTION 3.

Said chapter is further amended by revising Code Section 15-11-63, relating to designated felony acts, by striking "or" at the end of division (a)(2)(B)(ix), by striking the semicolon and inserting in its place "; or" at the end of division (a)(2)(B)(x), and by adding a new division to read as follows:

"(xi) Any violation of Code Section 16-7-2;"

SECTION 4.

Said chapter is further amended by revising subparagraph (e)(1)(B) of Code Section 15-11-63, relating to designated felony acts, as follows:

"(B) The child shall initially be confined in a youth development center for a period set by the order, to be not less than 12 nor more than 60 months; provided, however, that time spent in secure detention subsequent to the date of the order and prior to placement in a youth development center shall be counted toward the period set by the order; and; provided, further, that; where the order of the court is made in compliance with subsection (f) of this Code section, the child shall initially be confined in a youth development center for 18 months;"

SECTION 5.

Said chapter is further amended by revising subsection (b) of Code Section 15-11-66, relating to disposition of delinquent children, as follows:

"(b)(1) At the conclusion of the dispositional hearing provided in subsection (a) of Code Section 15-11-65, if the child is found to have committed a delinquent act, the court may, in addition to any other treatment or rehabilitation, suspend the driver's license of such child for any period not to exceed the date on which the child becomes 18 years of age or, in the case of a child who does not have a driver's license, prohibit the issuance of a driver's license to such child for any period not to exceed the date on which the child becomes 18 years of age. The court shall retain the driver's license for a period of suspension and return it to the offender at the end of such period. The court shall notify the Department of Driver Services of any such actions taken pursuant to this subsection.

(2)(A) If the child is adjudicated for the commission of a delinquent act, the court may in its discretion in those cases involving: ~~(A) a violation of probation involving another adjudicated delinquent act and upon the court making a finding of fact that the child has failed to respond to the graduated alternative sanctions set forth in paragraph (2) of this subsection; (B) an~~

(i) An offense that would be a felony if committed by an adult; or ~~(C) an~~

(ii) An offense that would be a misdemeanor of a high and aggravated nature if committed by an adult and involving bodily injury or harm or substantial likelihood of bodily injury or harm, in addition to any other treatment or rehabilitation, order the child to serve up to a maximum of 30 days in a youth development center, or after assessment and with the court's approval, in a treatment program provided by the Department of Juvenile Justice or the juvenile court.

(B) A child ordered to a youth development center under this paragraph and detained in a secured facility pending placement in the youth development center shall be given credit for time served in the secured facility awaiting placement. On and after July 1, ~~2011~~ 2013, the maximum number of days that the court may order a child to serve in a youth development center under this paragraph shall be increased to 60 days.

~~(2) The Department of Juvenile Justice, in conjunction with the Council of Juvenile Court Judges of Georgia, shall establish and monitor a graduated alternative sanctions program for children on probation. The graduated alternative sanctions program shall be implemented in each judicial circuit in consultation with the judge of the juvenile court. The graduated alternative sanctions program may include, but shall not be limited to, community service, electronic monitoring, increased reporting or intensive supervision, home confinement, day or evening reporting centers, or treatment intervention."~~

SECTION 6.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by adding a new Code section to read as follows:

"16-7-2.

(a) As used in this Code section, the term 'retail establishment' means an establishment that sells goods or merchandise from a fixed location for direct consumption by a purchaser and includes establishments that prepare and sell meals or other edible products either for carry out or service within the establishment.

(b) A person commits the offense of smash and grab burglary when he or she intentionally and without authority enters a retail establishment with the intent to commit a theft and causes damage in excess of \$500.00 to such establishment without the owner's consent.

(c) A person convicted of smash and grab burglary shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than two nor more than 20 years, by a fine of not more than \$100,000.00, or both; provided, however, that upon a second or subsequent conviction, he or she shall be punished by imprisonment for not less than five nor more than 20 years, by a fine of not more than \$100,000.00, or both."

SECTION 7.

Said title is further amended by revising subsections (b) and (e) of Code Section 16-12-1, relating to contributing to the delinquency, unruliness, or deprivation of a minor, as follows:

"(b) A person commits the offense of contributing to the delinquency, unruliness, or deprivation of a minor when such person:

(1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing a delinquent act as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(2) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing an act which would cause such minor to be found to be an unruly child as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(3) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be found to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2) of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section 16-11-121 to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any smash and grab burglary which would constitute a felony if committed by an adult."

"(e) A person convicted pursuant to paragraph (4), ~~or (5)~~, or (6) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

(1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than ~~five~~ ten years; and

(2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years."

SECTION 8.

Said title is further amended by revising division (9)(A)(vii) of Code Section 16-14-3, relating to definitions for the "Racketeer Influenced and Corrupt Organizations Act," as follows:

"(vii) Code Section 16-7-1, relating to burglary, or Code Section 16-7-2, relating to smash and grab burglary;"

SECTION 9.

Code Section 17-10-11 of the Official Code of Georgia Annotated, relating to credit for time served in confinement, is amended by revising subsection (b) as follows:

"(b) This Code section applies to sentences for all crimes, whether classified as violations, misdemeanors, or felonies, and to all courts having criminal jurisdiction located within the boundaries of this state; ~~except juvenile courts.~~"

SECTION 10.

This Act shall become effective on July 1, 2010, and Sections 2 and 5 of this Act shall apply to any child sentenced to probation on and after July 1, 2010; the former provisions of Code Section 15-11-66 shall continue to apply to any child sentenced to probation prior to July 1, 2010.

235

SECTION 11.

236 All laws and parts of laws in conflict with this Act are repealed.